

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11 HENRY JAMES HOLMES, } No. ED CV 18-01734-DOC (DFM)
12 Petitioner, }
13 v. } ORDER SUMMARILY
14 PEOPLE OF THE STATE OF } DISMISSING PETITION
15 CALIFORNIA, } WITHOUT PREJUDICE FOR
16 Respondent. } LACK OF JURISDICTION

17
18 **BACKGROUND**

19 On August 17, 2018, Petitioner filed in this Court a Petition for Writ of
20 Habeas Corpus by a Person in Federal Custody under 28 U.S.C. § 2241. See
21 Dkt. 1 (“Petition”). Petitioner filed a supplement to the Petition on September
22 10, 2018. See Dkt. 4. The Petition seeks relief from the conviction arising out
23 of Petitioner’s 2000 guilty plea to one count of assault with intent to commit
24 rape. Id. at 2.

25 By the Court’s count, the instant petition represents Petitioner’s fifth
26 attempt to obtain habeas corpus relief from his 2000 guilty plea. In 2003,
27 Petitioner filed a petition for writ of habeas corpus in this Court in Case No.
28 ED CV 03-922-NM (Mc). This petition was dismissed without prejudice

1 because Petitioner had not exhausted his state remedies. In 2004, Petitioner
2 filed another petition for writ of habeas corpus in Case No. ED CV 04-370-
3 DOC (Mc). This petition was denied on the merits. In 2016, Petitioner filed a
4 petition for writ of habeas corpus in Case No. ED CV 16-1474-DOC (DFM).
5 This petition was dismissed for lack of jurisdiction because it was a successive
6 petition and because Petitioner did not satisfy the “in custody” requirement of
7 28 U.S.C. § 2254. Finally, in 2016, Petitioner filed a petition for writ of habeas
8 corpus in Case No. ED CV 16-2260-DOC (DFM). This petition was dismissed
9 without prejudice because it too was a successive petition.

10 **DISCUSSION**

11 **This Court Lacks Jurisdiction Because the Petition Is a Successive Petition**

12 As the Court told Petitioner twice in 2016, it may not entertain a second or
13 successive habeas petition unless Petitioner obtains leave from the Ninth Circuit
14 Court of Appeals. 28 U.S.C. § 2244(b) reads, in pertinent part, as follows:

15 (1) A claim presented in a second or successive habeas
16 corpus application under section 2254 that was presented in a prior
17 application shall be dismissed.

18 (2) A claim presented in a second or successive habeas
19 corpus application under section 2254 that was not presented in a
20 prior application shall be dismissed unless—

21 (A) the applicant shows that the claim relies on a new
22 rule of constitutional law, made retroactive to cases on collateral
23 review by the Supreme Court, that was previously unavailable; or

24 (B)(i) the factual predicate for the claim could not have been
25 discovered previously through the exercise of due diligence; and

26 (ii) the facts underlying the claim, if proven and viewed in
27 light of the evidence as a whole, would be sufficient to establish by
28 clear and convincing evidence that, but for constitutional error, no

1 reasonable factfinder would have found the applicant guilty of the
2 underlying offense.

3 (3) (A) Before a second or successive application permitted
4 by this section is filed in the district court, the applicant shall move
5 in the appropriate court of appeals for an order authorizing the
6 district court to consider the application.

7 28 U.S.C. § 2244 (b)(1)-(3); see also Rule 9(b) of the Rules Governing § 2254
8 Cases in the United States District Courts. In addition, Rule 4 of the Rules
9 Governing § 2254 Cases in the United States District Courts provides that if it
10 plainly appears from the face of the petition and any exhibits thereto that the
11 petition is not entitled to relief in the district court, the judge shall make an
12 order for its summary dismissal.

13 Although Petitioner did not disclose his earlier federal petitions in the
14 Petition, it is clear from the face of the Petition that the present Petition is a
15 successive petition attacking the same conviction and sentence in Riverside
16 County Superior Court. On October 14, 2016, shortly before filing his last
17 petition, Petitioner sought permission from the Ninth Circuit Court of Appeals
18 to file a second or successive petition. That application for leave to file a
19 successive petition was denied. See Holmes v. State of California, No. 16-
20 73307, Dkt. 13 (9th Cir. June 30, 2017).

21 This Court does not have jurisdiction to consider a second or successive
22 petition absent authorization from the Ninth Circuit. Burton v. Stewart, 549
23 U.S. 147, 152, (2007); Cooper v. Calderon, 274 F.3d 1270, 1274 (9th Cir.
24 2001) (“When the AEDPA is in play, the district court may not, in the absence
25 of proper authorization from the court of appeals, consider a second or
26 successive habeas application.” (citation and quotation marks omitted)). The
27 Court will accordingly dismiss this petition without prejudice to its refileing at
28

1 such time as Petitioner obtains permission to file a successive petition.¹

2 **ORDER**

3 IT THEREFORE IS ORDERED that this action be summarily
4 dismissed without prejudice for lack of subject matter jurisdiction pursuant to
5 Rule 4 of the Rules Governing Section 2254 Cases in the United States District
6 Courts.

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8
9 Dated: October 15, 2018

10 

11 DAVID O. CARTER
12 United States District Judge

13 Presented by:

14 

15 DOUGLAS F. McCORMICK
16 United States Magistrate Judge
17
18
19
20
21
22
23
24

25 ¹ If Petitioner obtains permission to file a successive petition, he should
26 file a new petition for writ of habeas corpus. He should not file an amended
27 petition in this action nor should he use this case number from this action
28 because the instant action will be closed today. If and when Petitioner files a
new petition, the Clerk will give the petition a new case number.